

LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

Item No. 1.E.
Mtg. Date October 16, 2018
Dept. Development Services

Item Title: Sixth Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way

Staff Contact: Mike Viglione, Assistant Planner

Recommendation:

Adopt a resolution amending the Option Agreement to extend the option agreement to January 31, 2019.

Item Summary:

In September 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is Lemon Grove Housing Authority owned land. The Purchase Option Agreement required SDCLT to complete certain milestones by specified dates. These milestones ensure that SDCLT has progressed towards the purchase of 8084 Lemon Grove Way. The fourth milestone—securing building and site improvement permits and securing, as to form, the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be completed by May 19, 2016, and the Fifth Option Amendment extended this date to October 19, 2018. The ground lease has been approved as to form. The applicant is working with City staff and other agencies to achieve this milestone as it relates to securing permits; however, the applicant is unable to meet the specified deadline. City staff recommends that the City Council adopt a resolution amending the Option Agreement to provide a sixth time extension.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 500 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution Amending the Option Agreement

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.E.

Mtg. Date October 16, 2018

Item Title: **Sixth Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust for 8084 Lemon Grove Way**

Staff Contact: **Mike Viglione, Assistant Planner**

Discussion:

On September 22, 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is owned by the Lemon Grove Housing Authority (City Council Resolution No. 2014-3284 dated September 16, 2014). A nine unit housing development is currently entitled on the subject property based on approvals in 2007 and amendments approved on March 1, 2016. The Purchase Option Agreement allows SDCLT to purchase the property for one dollar per unit in exchange for constructing the units and restricting them to moderate income households included in their 99-year ground lease mechanism. SDCLT is required to achieve certain milestones by specified dates. These milestones ensure that SDCLT has done their due diligence to determine whether the project is feasible.

The first milestone—submission of a business plan—was to be achieved by December 2014. The business plan was submitted on December 1, 2014, and the City Council reviewed the business plan and provided feedback to SDCLT on January 6, 2015.

The second milestone—securing entitlements and construction financing—was to be achieved by September 2, 2015, and October 19, 2015, respectively. Minimal revisions to the approved Tentative Map (TM0052) and Planned Development Permit (PDP06-09) were proposed and amendments to the floor and elevation plans were approved by the City Council on March 1, 2016. Entitlements for both the tentative map and planned development permit have been secured since there has been substantial progress towards the issuance of a final map, grading plan, improvement plan and building permits for the completion of the project. While the first three amendments extended the deadline to provide evidence of construction financing, the fourth amendment approved on October 17, 2017, revised the second milestone to allow SDCLT to secure financing a minimum of 10 days prior to exercising the option.

The third milestone—submission of building and site improvement applications—was to be achieved by April 4, 2016. This milestone required submission of development plans and technical studies required for a grading permit, building permit, landscape permit, and a final map. Appropriate plans and reports include building and site construction plans, grading plans, a landscape documentation package, an acoustical analysis, a Storm Water Quality Management Plan and a hydrology report, and potentially other necessary reports, studies, and plans in accordance with City Council Resolutions 2694 and 2695, which approved TM0052 and PDP06-09 respectively. In addition, a “Hold Harmless” agreement was required for each submittal. In February of 2016, SDCLT submitted the necessary permit applications achieving the third milestone.

Attachment A

The fourth milestone—securing building and site improvement permits and securing approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be achieved by October 19, 2016; but if approved by Council, the requirement deadline for building and site improvement permits (with the exception of payment of Permit Fees) would be extended to January 31, 2019. This milestone requires that all permits applied for in the third milestone be secured (permits issued and improvements secured either through a bond or cash deposit with appropriate fees paid). At this time, SDCLT is preparing a resubmittal for engineering permits to address corrections requested by the City. Similarly, engineering and planning conditions of approval and remaining stormwater corrections must be addressed prior to building permit issuance. City staff estimates all of the needed engineering and building permits in the fourth milestone should be able to be issued and secured within two to four months assuming corrections are addressed. City staff recommends a sixth extension of the Option Agreement in order to allow SDCLT to satisfy final permit corrections and conditions (**Attachment B**). As a part of the fourth option agreement amendment, SDCLT and the City approved as to form a draft Ground Lease and an Affordable Housing Regulatory Agreement.

Should the City Council decide to take no action and/or decline to amend the Option Agreement, it is likely the Option Agreement will terminate on October 19, 2018 due to nonfulfillment of the fourth milestone. As a consequence, the developer would need to renegotiate a new Option Agreement with the City should they continue to pursue the project. At that time, the City Council may choose to pursue other opportunities for the property if this Option Agreement in fact does terminate.

Conclusion:

City staff recommends that the City Council adopt a Resolution amending the Option Agreement to provide a sixth time extension and related amendments (**Attachment B**).

RESOLUTION NO. 2018-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING THE SIXTH AMENDMENT TO AN OPTION AGREEMENT WITH THE SAN DIEGO COMMUNITY LAND TRUST FOR THE PARCEL IDENTIFIED AS 8084 LEMON GROVE WAY (APN 475-450-19-00)

WHEREAS, on June 20, 2006, and June 19, 2007, the former Lemon Grove Community Development Agency and a developer entered into loan agreements for the development of nine townhome units at 8084 Lemon Grove Way; and

WHEREAS, said developer defaulted on the loan agreements, resulting in the parcel identified as 8084 Lemon Grove Way becoming property of the City of Lemon Grove; and

WHEREAS, in 2014, the San Diego Community Land Trust provided a formal offer to purchase 8084 Lemon Grove Way from the City of Lemon Grove; and

WHEREAS, the San Diego Community Land Trust's offer included a commitment to develop and construct a minimum of nine affordable housing units to be ground leased for a 99-year period to households earning from 80 percent to 120 percent of the San Diego Area Median Income at the time of sale or resale; and

WHEREAS, the provision of these affordable units helps exceed the City's moderate housing targets established by the Regional Housing Needs Assessment (January 1, 2013 – December 31, 2020); and

WHEREAS, on June 17, 2014, the City Council directed City staff to negotiate purchase agreements with the San Diego Community Land Trust, based on its offer; and

WHEREAS, on September 16, 2014, the City Council approved an Option Agreement and a Real Estate Purchase and Sale Agreement between the City of Lemon Grove and the San Diego Community Land Trust; and

WHEREAS, on May 17, 2016, the City Council approved an amendment to the Option Agreement with the San Diego Community Land Trust extending the expiration date of Option Agreement milestone 7.4 to October 19, 2016 and the option term to March 22, 2017 (both six month extensions) and including an Optionee requirement to execute an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property; and

WHEREAS, the City negotiated a second amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2017, and the option term to September 22, 2017 (both six month extensions); and

WHEREAS, the City negotiated a third amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2017, and the option term to March 22, 2018 (both six month extensions) and requiring milestone 7.2 – secure construction financing – to be completed by July 19, 2017; and

WHEREAS, the City negotiated a fourth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2018, and the option term to September 22, 2018 (both six month extensions) requiring milestone 7.2 – secure construction financing – to be completed a minimum of 10 days prior to the execution of the option; and accepted the form of Ground lease, Ground Lease Rider and Regulatory Agreement; and

WHEREAS, the City negotiated a fifth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2018 and the option term to March 22, 2019 (both six month extensions); and

WHEREAS, the City has negotiated a sixth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to January 31, 2019; and

WHEREAS, the City Council has reviewed said amendment; and

Attachment B

WHEREAS, the City Council finds it in the best interest of the City of Lemon Grove to approve said amendment; and |

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves a Sixth Amendment to the Option Agreement (Exhibit 1) between the City of Lemon Grove and the San Diego Community Land Trust; and
2. Authorizes the City Manager to execute said Amendment and related documents reasonably necessary for fulfilling the terms of the Option Agreement, subject to minor modifications. |

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EXHIBIT 1 (PAGES 7 THROUGH 8)

SIXTH AMENDMENT TO OPTION AGREEMENT

This Sixth Amendment to Option Agreement ("**Sixth Amendment**") is entered into as of October __, 2018, by and between and between THE CITY OF LEMON GROVE a public body ("**Optionor**") and THE SAN DIEGO COMMUNITY LAND TRUST a California 501(c)(3) non-profit organization ("**Optionee**"),

RECITALS:

A. Optionor and Optionee entered into that certain Option Agreement dated September 22, 2014 relating to the Property commonly known as 8084 Lemon Grove Way, Lemon Grove, CA (APN 475-450-19-00), as amended by the First Amendment dated March 18, 2016, as amended by the Second Amendment dated October 5, 2016, as amended by the Third Amendment dated April 17, 2017, as amended by the Fourth Amendment dated October 18, 2017, and as amended by the Fifth Amendment dated April 18, 2018 (together the "**Option Agreement**").

B. Optionor and Optionee desire to further amend the Option Agreement set forth herein. All initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Option Agreement.

AGREEMENT:

NOW THEREFORE, and in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. Extension of deadline for Permits and Optionor's Approval. Subparagraph 7.4 of the Option Agreement is deleted in its entirety and replaced as follows:

"7.4 No later than January 31, 2019, Optionee shall have (i) completed all requirements necessary for Building and Site Improvement Permits (including building, street improvement, and grading plans shall be issued and the final map shall be recorded), with the exception of payment of fees for the foregoing permits and plans ("Permit Fees"). All outstanding Permit Fees shall be delivered to Escrow prior to the transfer of the Property to Optionor and shall be a Developer (Optionee) deliverable under section 2.6 of the revised Real Estate Purchase and Sale Agreement ("PSA"), as attached to the Fourth Amendment as Fourth Amendment Exhibit A."

2. Counterparts. This Sixth Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event, this Sixth Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one Sixth Amendment.

3. Effect of Sixth Amendment. Except as amended hereby, the Option Agreement remains in full force and effect.

Signature Page Follows

Attachment B

IN WITNESS WHEREOF, Optionor and Optionee have executed this Fifth Amendment as of the date set forth above.

OPTIONOR:

THE CITY OF LEMON GROVE,

By: _____

Name: _____

Its: _____

Approved as to legal form:

By _____
James P. Lough, City Attorney

OPTIONEE:

THE SAN DIEGO COMMUNITY LAND TRUST,

By: _____

Name: _____

Its: _____